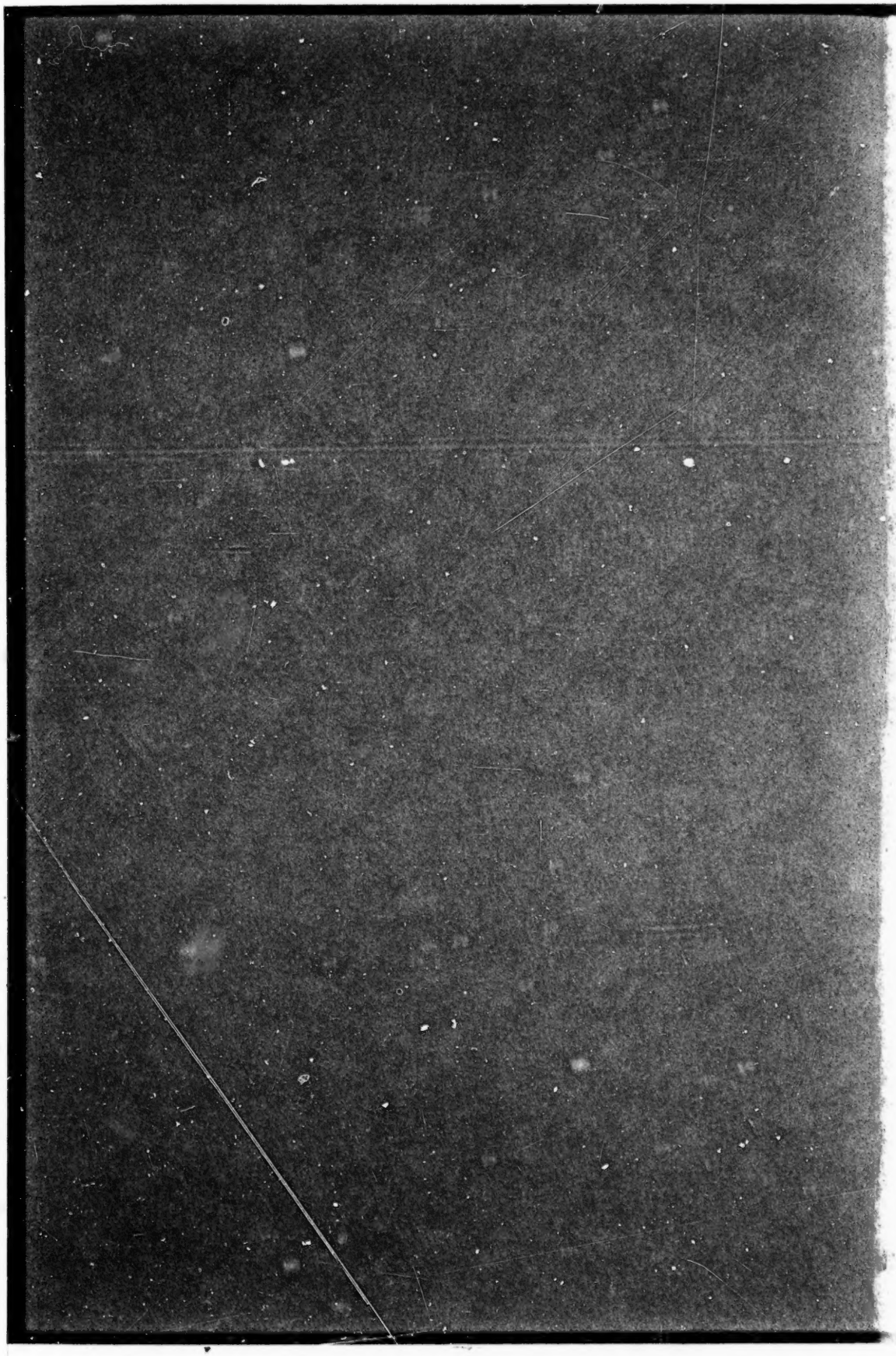

APPENDIX.

OPINION OF UNITED STATES COURT OF APPEALS FOR THE SIXTH CIRCUIT (400 F. 2d 572).

Decided August 28, 1968—Before McCree and Combs, *Circuit Judges,* and McAllister, *Senior Circuit Judge.*

Combs, Circuit Judge. These appeals are taken from the District Court's action dismissing the complaint of plaintiff-appellant, Brotherhood of Locomotive Firemen and Enginemen (hereinafter referred to as Firemen's union) in two different suits stemming from alleged violation of the Railway Labor Act. The first suit was brought against the Louisville and Nashville Railroad Company (hereinafter referred to as L&N), with the Brotherhood of Locomotive Engineers (hereinafter referred to as Engineers' union) intervening as defendant. The second suit was brought by the Firemen's union and certain individual members against the L&N and the Engineers' union. Since both suits arose out of the same factual background, they were consolidated on this appeal. The general background is as follows.

The firemen's union represents the overwhelming majority of firemen on the nation's railroads. Due to advances in railroad technology over the last half century, most trains do not, and have not for some time, required the services of firemen as such. With the advent of diesel and electric locomotives, the need for someone to "fire the boilers" has been eliminated. The continued use of firemen (now called helpers) on locomotives has been justified for several reasons. For example, they serve as a lookout, perform some mechanical tasks, relieve the engineer, and are a source of future engineers.

Involved in these cases is the status of firemen as future engineer. Formerly, virtually all engineers started out as firemen. The Firemen's union contracts with all railroads, including the L&N, have long contained a provision whereby firemen could be promoted to engineer. The Firemen's union construes this provision to mean that, after three years' road experience and the successful completion of mechanical tests given by the company, a fireman is eligible for promotion to engineer. Also, that engineers may be acquired from other sources only when no firemen are available. The L&N does not take such a restrictive view of this provision, arguing that it merely provides a procedure whereby firemen may become engineers rather than serving as a limitation on the procurement of engineers.

In April, 1966, L&N established in conjunction with the Engineers' union a training program for "apprentice engineers." An agreement between L&N and the Engineers' union set the compensation for these trainees. The program has no connection with the contract procedure for advancing firemen to engineers and, according to L&N, was initiated only to supplement the number of engineers obtainable from the ranks of firemen. The Firemen's union claims that the program violates the bargaining agreement.

In case No. 17,388, the Firemen's union seeks to invoke Section 2, Seventh of the Railway Labor Act, which reads:

> "No carrier, its officers, or agents shall change the rates of pay, rules or working conditions of its employees, as a class, as embodied in agreements except in the manner prescribed in such agreements or in Section 6 of this Act."

Section 6 of the Act provides, among other things, for the orderly adjustment of disputes and bargaining differences under the auspices of the National Mediation Board. The Firemen's union contends that, in establishing the apprentice engineers program, L&N changed a rule embodied in

the collective bargaining agreement without following the procedures of Section 6. In this action, the Firemen's union seeks to enjoin L&N from carrying on the apprentice training program and to vacate any promotions made through the program. The Engineers' union was permitted to intervene as a defendant. The District Court dismissed the complaint on the ground that it lacked jurisdiction to entertain the suit. We affirm.

The Railway Labor Act is a comprehensive statutory plan for resolving disputes between transportation companies and their employees. The Act looks toward the orderly resolution of disputes and sets up procedures whereby this goal may be accomplished. One of the things condemned by the Act is unilateral action by a party to an agreement which has the effect of changing the status quo established by the agreement. A United States District Court has jurisdiction to enjoin such action. *Texas & N. O. R. Co. v. Ry. Clerks*, 281 U. S. 548 (1930).

However, there are certain types of disputes encompassed by the Act which may not be resolved by the courts. One of these is a representation or jurisdictional dispute between labor unions. *Switchmen's Union* v. *Board*, 320 U. S. 297 (1943); *General Committee* v. *M.-K.-T. R. Co.*, 320 U. S. 323 (1943); *General Committee* v. *Sou. Pac. Co.*, 320 U. S. 338 (1943). Congress has conferred exclusive jurisdiction upon the National Mediation Board to resolve such disputes.[1] Section 2, Ninth of the Railway Labor Act, 45 U. S. C. § 152.

In the *M.-K.-T. R. Co.* case, *supra*, a jurisdictional dispute within the meaning of the Act was defined as "an

1. It is noted that the United States District Court for the District of Columbia has recently ordered the National Mediation Board to hear this dispute, the Board having originally declined to assume jurisdiction. *Brotherhood of Locomotive Engineers* v. *National Mediation Board*, Civil No. 2080-66, D. D. C., April 26, 1968.

asserted overlapping of interest of two crafts" necessitating a determination of the point where the authority of one craft ends and the other begins. The Supreme Court said, "Congress did not attempt to make any codification of rules governing these jurisdictional disputes." 320 U. S. 323, 335.

A similar problem was presented to this Court in *Brotherhood of Railway & S. S. Clerks* v. *United Air Lines, Inc.*, 325 F.2d 576 (6th Cir. 1963), cert. denied, 377 U. S. 903 (1964), cert. dismissed as improvidently granted, 379 U. S. 26 (1964). In that case, Capital Airlines merged with United Air Lines. The appellant union had a collective bargaining agreement with Capital. The former Capital employees were grouped, most of whom were non-union, the remainder being represented by the International Association of Machinists. The Brotherhood filed suit, seeking a declaration that the contract survived the merger and that it still represented the former Capital employees.

This Court pierced the technical issues of pleading in *United Air Lines*, and held that the case involved a representation dispute which fell within the exclusive jurisdiction of the National Mediation Board.

The Firemen's union contends it was error to permit the Engineers' intervention. Under our view of the case, it is apparent that the Engineers' union was properly permitted to intervene under Rule 24(A) (2), Federal Rules of Civil Procedure. Other arguments and contentions of appellant are similarly without merit.

The complaint in the second case, No. 18,479, alleged that L&N and the Engineers' union had violated Section 2 Third and Fourth of the Railway Labor Act. Briefly stated, these sections guarantee carrier employees the right to organize and bargain collectively through a representative

of their own choice. They also prohibit the carrier or anyone else from influencing, coercing, or otherwise interfering with the free choice of a bargaining representative.

The Firemen's union contends that L&N and the Engineers' union are working together to influence prospective firemen to join the Engineers' union with the goal of eventually ousting the Firemen's union as bargaining representative of L&N firemen. It is said that apprentice engineers are being influenced to join the Engineers' union and are moving into firemen's jobs when not working as engineers. The Firemen's union seeks to enjoin the appellees from interfering with the free choice of bargaining representatives and, more importantly, to end the apprentice engineers program.

The District Court dismissed the complaint, concluding that "this case concerns the same subject matter and same relief heretofore denied by this Court in Civil Action No. 5402 [No. 17,588] . . . ."

It is clear that the second case is another attempt to have this jurisdictional dispute between two unions litigated in federal court. The rule is plain: Jurisdictional disputes between labor organizations governed by the Railway Labor Act are within the exclusive jurisdiction of the National Mediation Board.

The judgment of the District Court dismissing the complaint in each case is affirmed.

COMPLAINT IN NO. 17,588.

(Plaintiff's Appendix in Court of Appeals Pages 5a-11a.)

COMPLAINT.

The Brotherhood of Locomotive Firemen and Enginemen, Plaintiff above named, for its cause of action against the Louisville and Nashville Railroad Company, Defendant above named, states as follows:

(1) This action is one for a restraining order and an injunction to restrain and enjoin the Defendant railroad from engaging in wrongful and unlawful acts, and from violating the terms and provisions of the Railway Labor Act.

(2) Jurisdiction of this Court is invoked and attaches pursuant to the Acts of Congress and statutes of the United States, to-wit: The Railway Labor Act (45 USC, Sections 151, et seq.); Interstate Commerce Act (49 USC, Sections 1, et seq.); and the Act of June 25, 1948 (28 USC, Sec. 1337).

(3) Defendant, Louisville and Nashville Railroad Company, is a Kentucky corporation, having its principal office in Kentucky located in Louisville, Kentucky. Said defendant is a common carrier engaged in interstate and intrastate commerce by railroad, and is subject to the laws of the United States in respect thereto, as hereinafter set out. As such common carrier, defendant owns and operates a railroad in thirteen states of the United States.

(4) Plaintiff is a national railway labor organization, having its principal office and headquarters at Cleveland, Ohio. Plaintiff has been for many years, and now is, the duly designated and authorized bargaining representative of and for the firemen's crafts, for the purpose of the Railway Labor Act, employed on the defendant railroad.

(5) Plaintiff, acting through its duly authorized representatives, representing the locomotive firemen's crafts employed on the defendant railroad, has, during many years prior to the filing of this complaint, negotiated and entered into collective bargaining agreements with the defendant railroad, for the purpose of establishing the rates of pay, rules and working conditions pertaining to the firemen's crafts employed on the Louisville and Nashville Railroad System, pursuant to the requirements of the Railway Labor Act.

(6) The Defendant, Louisville and Nashville Railroad Company, is managed and operated by officers who function as the management of the entire Louisville and Nashville Railroad System. Said defendant is engaged in interstate commerce, as a "carrier", as defined in Section 1 of the Railway Labor Act (45 USC, Sec. 151), and is subject to the provisions of said Act.

(7) Plaintiff heretofore, acting by and through its duly authorized agents and representatives, and the Defendant, the Louisville and Nashville Railroad Company, acting by and through its duly authorized agents and representatives, executed and entered into an agreement in writing which established a plan for the training and development of an adequate corps of qualified and competent locomotive engineers. Said plan contemplates and provides that firemen shall train to become engineers by working for a period of three (3) years as firemen, and shall, during that period, pursue a course of study pertaining to the operation of locomotives and to the construction and operation of the braking systems with which locomotives and trains are equipped. The said plan also makes provisions for the carrier to employ, when the carrier has an insufficient corps of engineers to fulfill its need for engineers, "hired engineers" in a certain ratio to the number of firemen that are being trained to be promoted to engineers.

"Hired engineers" are persons who have been trained and have become qualified to assume the responsibilities of engineer, by having been trained and employed on other railroads.

(8) The plans for the training, development and acquisition of sufficient qualified engineers to meet the carrier's need constitutes Article 26, Sections 2 through 12, inclusive, and Section 20, of the existing collective Agreement in effect between plaintiff and the defendant, the Louisville and Nashville Railroad Company. A copy of the aforesaid is attached as part hereof.

Paragraph (9) Stricken by Amendment to Complaint.

(10) The existing plan for the training and acquisition of an adequate corps of qualified engineers provides that when the Louisville and Nashville Railroad Company finds it necessary to acquire additional engineers by employing "hired engineers", the engineers thus acquired shall be given a seniority date as firemen commensurate with their seniority date as engineers, and they thereby become members of the firemen's craft and work as firemen when their services, as engineers, are not needed by the Louisville and Nashville Railroad Company.

(11) On or about April, 1966, the defendant herein, without prior notice to the plaintiff, instituted a program for the training of so-called "apprentice engineers", by selecting employes from other crafts on the defendant railroad, such as employes of the brakemen's craft and employes from the switchmen's craft, and by employing persons from the public, who are not qualified as "hired engineers", and placing them in such aforesaid training program; and the Louisville and Nashville Railroad Company has thereby declared and made known to the plaintiff its intention to disregard, deliberately violate and repudiate its existing plan for the training and acquisition

of engineers, covered by the agreement now in effect between plaintiff and the defendant, as hereinbefore set forth.

(12) Plaintiff is informd and believes, and upon such alleges, that the defendant railroad is about to, and will, unless enjoined and restrained from so doing, place a number of its so-called "hired engineers" on the engineers' seniority roster, give them seniority dates as engineers and also seniority dates as firemen, contrary to the existing agreement between plaintiff and defendant.

(13) Plaintiff further alleges that by, through and because of historical custom and practice, engineers have been obtained by the promotion of firemen and by "hiring" qualified engineers. Further, said plan and the custom and practices thereunder constitute rules of employment and working conditions, within the meaning of the Railway Labor Act.

(14) Plaintiff states that Section 2, First; Section 2, Seventh; and Section 6, of the Railway Labor Act, read, respectively, as follows:

> "Section 2, First. It shall be the duty of all carriers, their officers, agents, and employees to exert every reasonable effort to make and maintain agreements concerning rates of pay, rules, and working conditions . . ."
>
> "Section 2, Seventh. No carrier, its officers, or agents shall change the rates of pay, rules or working conditions of its employees, as a class, as embodied in agreements except in the manner prescribed in such agreements or in section 6 of this Act."
>
> "Section 6. Carriers and representatives of the employees shall give at least thirty days' written notice of an intended change in agreements affecting rates of pay, rules, or working conditions, and the time and place for the beginning of conferences between the representatives of the parties interested in such intended changes shall be agreed upon within ten days after the receipt of said notice, and said time shall be

within the thirty days provided in the notice. In every case where such notice of intended change has been given, or conferences are being held with reference thereto or the services of the Mediation Board have been requested by either party, or said Board has proffered its services, rates of pay, rules or working conditions shall not be altered by the carrier until the controvery has been finally acted upon as required by Section 5 of this Act, by the Mediation Board, unless a period of ten days has elapsed after termination of conferences without request for or proffer of the services of the Mediation Board."

(15) Plaintiff states that the actions of the Louisville and Nashville Railroad Company, defendant herein, in violating and repudiating the existing plan for the training and acquisition of qualified engineers, and the institution by defendant of a new so-called "Engineer Apprentice Training Program" violates Section 2, Seventh, of the Railway Labor Act which prohibits carriers from changing rules of employment and working conditions as contained in existing collective agreements, without first following the procedure required by Section 6 and by Section 3 of the Railway Labor Act, by negotiating with the plaintiff for desired changes in the existing collective agreement.

(16) The plaintiff Brotherhood has no adequate remedy at law to prevent the Louisville and Nashville Railroad from carrying out its intended and threatened acts, as herein set forth, which are contrary to the prohibitions of the Railway Labor Act, and that, unless restrained and enjoined from so doing said defendant will carry out its intended and threatened acts, as hereinbefore set out. Further, that great and irreparable injury and damage will be suffered and sustained by the plaintiff Brotherhood and the employees it represents unless said defendant is restrained and enjoined from carrying out its intended and threatened acts, as hereinbefore set out.

Further, that great and irreparable damage will be suffered and sustained by plaintiff Brotherhood and the employees it represents caused by delay in giving notice of an application to this Court for a restraining order or injunction.

WHEREFORE: Plaintiff, Brotherhood of Locomotive Firemen and Enginemen, demands:

(1) That this Court issue a temporary restraining order forthwith, and without notice, and a preliminary injunction, to be made permanent on final hearing, enjoining, restraining and ordering the Defendant, Louisville and Nashville Railroad Company, and all persons acting in concert or participating with it, jointly or severally, to:

(a) Cease and desist assigning or placing men in the so-called engineers' training program; and from: (i) allowing said men to acquire firemen's seniority dates and entering the firemen's craft and performing service customarily and historically performed by firemen in the process of qualifying for promotion to engineers.

(b) Vacate, void and hold for naught any promotions heretofore made to engineers, except as taken from the ranks of the craft of fireman.

(c) Take all action, forthwith, as may be necessary to insure that Article 26, Sections 2 through 12, inclusive, of the existing agreement, and all other agreements between the Plaintiff and the Defendant, and the applicable provisions of the Railway Labor Act, are carried out and complied with.

(2) That Plaintiff be granted such other and further relief, including the cost of this action and attorney's fees, as this Court may or shall deem necessary or proper.

DISTRICT COURT'S DECISION IN NO. 17,588.

Plaintiff's Appendix in Court of Appeals,

Pages 39a-40a.

COURT'S DECISION.

July 2, 1966

Louisville, Kentucky

Before Honorable James F. Gordon, United States District Judge, Western Division of Kentucky, on Saturday, June 2, 1966, at Louisville, Kentucky.

BY THE COURT: Gentlemen, as to the motion of the Defendant Louisville & Nashville Railroad and the Brotherhood of Locomotive engineers, the Court will sustain the motions and dismiss this action for lack of jurisdiction and dissolve the restraining order now in effect.

It appears to this Court that the resolution of the problems presented here fall within the purview of the Railway Labor Act, as the same, in essence, to me represent a dispute between the Firemen and the Engineers as to their craft lines relative to the training of apprentice engineers and the source from which these individuals must come.

Congress took away from the courts of the United States, who, admittedly, do not understand the operational problems or jargon of the Railway Industry, the right to determine such jurisdictional disputes.

The relief sought by the Firemen, if available to them, in the judgment of this Court, must be obtained by them by procedure under the Railway Labor Act.

The Court follows the language of the Sixth Circuit in the Brotherhood of Railway Clerks against the United Airlines and the Defendant will submit proposed findings of fact and conclusions for this ruling.

COMPLAINT IN NO. 18,479.

Plaintiff's Appendix in Court of Appeals,

Pages 4a-19a.

COMPLAINT.

(Filed December 22, 1967.)

Now Comes plaintiffs, B. A. Turner, G. J. Calhoun, E. A. Heckel, T. T. Holsinger, D. L. Cooksey, R. M. Muirheid, W. A. Pierce, J. G. Starrett, R. A. Green, Emmett Clark, John Hundley, and Brotherhood of Locomotive Firemen and Enginemen (BLF&E), by Harold C. Heiss, Robert E. Hogan, Herbert L. Segal, Alex Elson, and Elson, Lassers and Wolff, attorneys for plaintiffs and complain against defendants Louisville and Nashville Railroad Company (L&N) and Brotherhood of Locomotive Engineers (BLE) and allege:

1. BLF&E is a labor organization, national in scope, which represents all of the firemen employed by L&N. There is now in force between L&N and BLF&E a labor contract relating to the employment of firemen on the L&N. The individual plaintiffs are firemen or "promoted firemen," as hereafter defined, employed by L&N. The individual plaintiffs have a right under federal statutes, hereafter alleged, to be represented for collective bargaining purposes by the labor organization of their choice, namely BLF&E. They have a right, additionally, to effective representation by the labor organization of their choice, unhampered by unlawful acts of a carrier or another labor organization. Both such rights have been and are being impaired by L&N and BLE, as more fully alleged below.

2. L&N is a common carrier by railroad and is an "em-

ployer", as defined in Section 1 of the Railway Labor Act, 45 U. S. C. § 151. BLE is a labor organization, national in scope, and for many years has represented the engineers employed by L&N. There is now in force a labor contract between L&N and BLE relating to the employment of engineers on the L&N.

3. Jurisdiction is conferred on the Court by the Railway Labor Act, 45 U. S. C. § 152 Third and Fourth and by 28 U. S. C. §§ 1331 and 1337 in that the matter in controversy exceeds the sum of value of $10,000, exclusive of interest and costs and arises under the laws of the United States and in that the matter arises under an Act of Congress regulating commerce.

4. Section 2, Third and Fourth of the Railway Labor Act, 45 U. S. C. § 152, Third and Fourth provides as follows:

> "Third. Representatives for the purpose of this Act, shall be designated by the respective parties without interference, influence, or coercion by either party over the designation of representatives by the other; and neither party shall in any way interfere with, influence, or coerce the other in its choice of representatives. Representatives of employees for the purposes of this Act need not be persons in the employ of the carrier, and no carrier shall, by interference, influence, or coercion seek in any manner to prevent the designation by its employees as their representatives of those who or which are not employees of the carrier.
>
> "Fourth: Employees shall have the right to organize and bargain collectively through representatives of their own choosing. The majority of any craft or class of employees shall have the right to determine who shall be the representative of the craft or class for the purposes of this Act. No carrier, its officers or agents, shall deny or in any way question the right of its employees to join, organize, or assist in organizing the labor organization of their choice, and it shall be unlawful for any carrier to interfere in any way with the organization of its employees, or to use the funds of

> the carrier in maintaining or assisting or contributing to any labor organization, labor representative or other agency of collective bargaining, or in performing any work therefor, or to influence or coerce employees in an effort to induce them to join or remain or not to join or remain members of any labor organization or to deduct from the wages of employees any dues, fees, assessments, or other contributions payable to labor organizations, or to collect or to assist in the collection of any such dues, fees, assessments, or other contributions: *Provided* . . ."

5. For many years employees in engine service (i.e., employed as firemen or engineers) have entered engine service as firemen. While working as firemen, they are required to take and to pass a series of examinations for promotion to engineer. After passing such examinations, and after acquiring requisite experience, firemen are promoted to engineer. The need of the service for engineers, however, fluctuates constantly, due to traffic volume and other factors; hence firemen, after being promoted to engineer, will serve as such on some occasions and on other occasions will return to service as firemen. Firemen promoted to engineers, but working as firemen, are called "promoted firemen." Gradually, as a fireman acquires more seniority, he devotes more and more of his time to service as an engineer and less and less to service as a fireman.

6. For many years firemen on the L&N have been represented for collective bargaining purposes by the BLF&E and the engineers by BLE. Because a substantial number of engine service employees work a part of their time as fireman and a part of their time as engineers, it has long been traditional and is now specifically permitted by the Railway Labor Act, Section 2, Eleventh (c), 45 U. S. C. Section 152, Eleventh (c) for engine service employees to be members of either organization. The great bulk of

firemen, however, are members of BLF&E and a majority of the engineers are members of BLE. Some engineers, however, are members of BLF&E and some firemen are members of BLE.

7. In violation of Section 2, Third and Fourth of the Railway Labor Act, L&N and BLE conceived a plan to interfere, influence and coerce the firemen employed by L&N in the free choice of their collective bargaining representatives, to give unlawful assistance to BLE, and otherwise to violate Section 2. Unless restrained and enjoined by the Court from so doing, the L&N and BLE will, by the unlawful means and devices herein set out, ultimately oust BLF&E as the collective bargaining representative of the firemen on the L&N and to replace it by the BLE. The devices utilized by L&N and BLE to achieve these aims are as set forth below.

8. For many months prior to April 28, 1966, and subsequently thereto, there was and continues to be a need for a substantial number of firemen on the various divisions and seniority districts of L&N. L&N, however, contrary to the needs of the service and contrary to its obligations as a common carrier has failed and refused to hire firemen to meet the needs of the service. Had such firemen been hired, they would have been represented for collective bargaining purposes by BLF&E.

9. As more fully alleged below, BLF&E, more than one year prior to April 28, 1966, served a notice on L&N pursuant to Section 6 of the RLA, requesting it to negotiate on a training program for firemen. Nevertheless, as a first step in the plan of L&N and BLE to interfere with the selection of a collective bargaining representative by L&N firemen and to otherwise violate Section 2, Third and Fourth of the Railway Labor Act, L&N and BLE, on April 28, 1966, entered into a purported collective bargaining agreement with respect to "apprentice loco-

motive engineers," a copy of which is attached hereto as Exhibit A. As of April 28, 1966, there was no group of employees on the L&N known as "apprentice locomotive engineers" and no employees certified as such had been employed by the L&N as of that date. From the inception of railroading in the United States and throughout the history of the L&N, firemen were trained to serve as engineers and are the source of engineers for railroads including the L&N. Under the purported agreement, which simply fixes a rate of pay, the L&N purportedly has established an apprentice training program for engineers, although there was and is little need for engineers, on the L&N system, there being an adequate number of promoted firemen to meet L&N's need for engineers. The true purpose of the purported agreement was to secure more employees to act as firemen whose loyalties would be with the BLE, rather than the BLF&E, and who could be counted on as voting for the BLE in any representation election which might thereafter arise for the selection of a collective bargaining representative for the firemen on the L&N system. The said agreement and its implementation, as hereinafter set forth, was and is in violation of Section 2, Third and Fourth of the Railway Labor Act.

10. As a second step in furtherance of their aforesaid plan, L&N, in further violation of Section 2, Third and Fourth of the Railway Labor Act, after entering into the purported agreement of April 28, 1966 for the t raining of engineers without service as firemen, next transferred a number of L&N employees (such as brakemen, switchmen and others) who were not in engine service to jobs as "apprentice locomotive engineers." Under the foregoing agreement, the so-called "apprentice locomotive engineers" were given a short course of instruction and were then assigned for on-the-job training by observing and working with promoted engineers on normal tours of duty

in road and yard service. After some months of such training and passing of examinations the "apprentices" were promoted to engineer. To this date, approximately 64 "apprentices" have been so promoted and additional numbers are now in training.

11. As alleged above, L&N had and has no urgent need for engineers, but did and does have an urgent need for firemen. Accordingly, as a third step in the plan of L&N and BLE, L&N in bad faith disregarded and, in fact, set aside the collective bargaining agreement between BLF&E and L&N in order to place the "apprentices" on the firemen seniority roster.

The collective bargaining agreement between BLF&E and L&N permits L&N, under certain circumstances, to employ as engineers men who have qualified as such on other carriers (Article 26 of the Agreement of January 11, 1929, as amended. A copy of the relevant portions of said Article 26 is attached hereto as Exhibit B). The collective bargaining agreement further provides that a "hired engineer" on the date that he performs his first service as an engineer also acquires a seniority date as a fireman. The provisions of the collective bargaining agreement respecting "hired engineers" were intended to apply and have traditionally always been applied only to engineers who had qualified as engineers and who had been promoted to engineer on another carrier and who had then left its service, or engineers of the L&N transferred from other seniority districts or who previously resigned or had been discharged. All such "hired engineers" had worked as engineers prior to their employment by the L&N. These provisions had been used by L&N only in those circumstances where there was a need for engineers as such on an L&N seniority district. Because L&N had little need in recent years for additional engineers, no "hired engineers" have been employed (with possibly isolated exceptions) for

the last ten to fifteen years. "Hired engineers" have never been used and were not intended to be used as a means of promoting new employees designated as "apprentices" to jobs as engineers. Nevertheless, L&N, in order to achieve its objective of securing firemen status for the "apprentice engineers," applied the "hired engineers" seniority rules to these "apprentices" in its efforts to influence the choice of a collective bargaining representative of the firemen.

12. A "hired engineer," however, could not be called to work as a fireman under Article 26 until he had served at least one day as an engineer. On several seniority districts, in the normal course of events, a man qualified as engineer would be required to wait several years before being called to service as engineer. L&N and BLE deemed it necessary, therefore, to find a device on such seniority districts for L&N to call "apprentice engineers" to engine service on at least one occasion so that they could be given a seniority date as engineer and, hence, as a fireman.

13. Engineers are required to perform two types of work--first, to work on regularly assigned positions on scheduled passenger trains, scheduled freight trains and yard operations which work on fixed shifts; and, second, to work in "pool service." Pool service includes working as engineer on road freight trains which are dispatched from classification yards at any hour of the day or night when a sufficient number of cars have accumulated at a classification yard to be formed into a train. The men in pool service also take the places of engineers on regularly assigned runs who are unable to perform their ordinary duties because of sickness, vacations, personal reasons, etc. On each seniority district, at the end of each semi-monthly period, a count is made of the average number of miles "run" by the men in the pool. Under the BLF&E—L&N collective bargaining agreement, if the average number of miles run by the men in the pool falls below 1,500 miles,

men are removed from the pool and returned to service as firemen. If, however, the average number of miles exceeds 1,800 miles, then men are added to the engineers' pool. In this fashion, the carrier is assured of an adequate number of men in the pool at all times; the number of men in the pool is constantly adjusted so that each man has an opportunity to earn a reasonable wage, and so that no man is required to work an excessive number of hours, to the detriment of the carrier, of the public and the employee himself.

14. As a fourth step in the plan of L&N and BLE, and to achieve the goal of providing instant seniority as firemen for the "apprentices," L&N in bad faith disregarded the foregoing provisions of the collective agreements between BLF&E and L&N carefully prescribing the conditions under which a man may be added to or removed from the engineers' pool. L&N, in bad faith and in complete derogation of such provisions and in violation of Section 2, Third and Fourth of the Railway Labor Act, has repeatedly, artificially and without regard to operating needs increased the number of men in the engineers' pool for short periods of time, for the sole purpose of giving the "apprentices" a seniority date as engineers and as firemen, so as to enable L&N to use such "apprentices" as firemen, and to qualify them to vote in a representative election for the selection of a collective bargaining representative other than the BLF&E. The wrongful course of conduct of L&N is illustrated by the following:

(a) On the Cumberland Valley Division for the second period of July, 1966, L&N increased the number of men in the engineers' pool. Attached hereto as Exhibits C and D are the roster of men assigned to the engineer pool for the Cumberland Valley Division for the second period of July, 1966, and the first period of August, 1966, respectively. Column A lists the names of the men regularly

assigned to the pool and shows the miles run by them during that period. As shown by the notation "A-28" or "A-29", after the names of 13 men on Exhibits C and D these men (all of whom were "apprentices") were added to the list on July 28 and July 29. They remained on the list for only a few days, ran only a few hundred miles and then on July 30 or 31, in some cases, on August 1 or 2, were removed from the pool roster. Removal is indicated by the notation "B-30" or "B-31" on Exhibit C and "B-1" or "B-2" on Exhibit D. Adding the names of these "apprentices" to the pool roster was not required by the needs of the service, but was done solely for the purpose of giving these "apprentices" a seniority date as engineers and, hence, also as firemen. Thereafter, these men were employed as firemen on the Cumberland Valley Division.

(b) In October, 1966, on the Main Stem First Division of the Louisville Division, a substantially similar device was employed for giving six other "apprentices" seniority dates and with it firemen seniority dates. On October 26, 1966, as shown by Exhibit E attached hereto, six apprentices were added to the pool (Van Almon, Wilson, Boaz, Bodkens, Wemes and Monin). These men were subsequently removed from the pool on November 2, 1966, as shown by Exhibit F attached hereto. Said "apprentices" have been placed on the firemen's seniority roster, and have been used as such.

(c) On May 22, 1967, on the Cumberland Valley Division of the L&N, an official of the railroad called engineers on the engineers' pool and requested them to lay off for the 11:00 P.M. shift, so as to make it possible for the railroad to qualify three men as engineers. The three men in question were "apprentice engineers." In response to this request, a number of engineers did lay off. At 11:00 P.M. the same day, ten men were added to the engineers' pool, including the three "apprentice" engineers in

question. As of 3:30 A.M. the next day, the board was reduced by ten men. The three "apprentice" engineers called for duty after 11:00 P.M., and after working only one assignment, thereby, according to L&N and BLE established seniority as an engineer in the Cumberland Valley Division. They have since been used as firemen. Similar devices were used in other divisions at other dates in order to establish seniority dates for "apprentices".

15. As a fifth step in the L&N and BLE plan to interfere with the selection of a collective bargaining representative in violation of Section 2, Third and Fourth of the Railway Labor Act, and in bad faith and in complete derogation of the collective bargaining agreement with the BLF&E, L&N has assigned work to "apprentices" who have secured firemen's seniority dates as above described which should have been assigned to firemen with more seniority and has otherwise discriminated against such firemen in favor of such "apprentices."

16. As a sixth step, L&N has sought to create additional employment opportunities for engineers, and thus permit the employment of additional apprentices at a more rapid rate than normal attrition would provide. To this end, and despite L&N's claim that there is a shortage of engineers L&N has approved heavy payments to engineers eligible to retire as inducements for retirement. A number of engineers have accepted such offers. Thereby it has been possible for L&N more rapidly to employ "apprentices" actually working primarily as firemen, the bulk of whom are members of or sympathetic to BLE.

17. L&N, in addition and as part of the foregoing plan of action, has made clear to the "apprentices" that the BLE is the labor organization which it favors. Among the actions taken in this respect are the following:

a. L&N informed the "apprentices" that the ap-

prentice program was an L&N-BLE sponsored program.

b. The engineers used for training purposes did not represent a cross-section of all L&N engineers, but, rather, where possible, engineers and officers of the BLE known by L&N to be members of BLE and, in particular, local chairmen of BLE. Thus, the apprentices received their training in the course of working primarily with BLE members and BLE local chairmen, rather than BLF&E members. Such BLE members thereby had an exceptional opportunity and utilized the opportunity during the course of the training program, which customarily lasted several months, in which to encourage the "apprentices" to join the BLE.

c. At the conclusion of the apprentice training program, L&N has been conducting a graduation ceremony for each group of apprentice engineers and has been combining the graduation ceremony with a dinner. At these ceremonies and dinner L&N has invited representatives of the BLE to attend, but has not invited representatives of the BLF&E. As a result the "apprentices" are led to infer that the BLE stands in the graces of the company employing them, that the program they have just completed is a joint program between L&N and BLE, that they owe a special debt to BLE for their employment and that, accordingly, it would be to their best interests to join the BLE, even though they will spend a substantial portion of their working careers as firemen and not as engineers.

18. Although the approximately 64 "apprentices" above referred to purportedly have been promoted to engineer, in fact they are working almost entirely as firemen, since there is a need for additional firemen but little need for additional engineers. Yet, of this 64, only six have

joined BLF&E, while the bulk of the remainder, BLF&E alleges on information and belief, have joined the BLE.

19. In violation of the Railway Labor Act, L&N has given assistance and special privileges to BLE and certain of its favored members and has not given such aid and special assistance to BLF&E and its members. By so doing, L&N has demonstrated to the apprentice engineers, and firemen that BLE is the labor organization favored by L&N, that its members receive favored treatment and that its members have superior opportunities for advancement, favors, and privileges. By so doing, L&N encouraged new engineers and firemen to join BLE and encouraged BLF&E members to change their membership from BLF&E to BLE. In consequence new engineers and firemen have joined BLE and BLFE members have dropped their membership and joined BLE. Among the acts of assistance and granting of special privilege are the following:

(a) Under the collective bargaining agreement between L&N and BLE, and between L&N and BLF&E, engineers, after they have operated a locomotive for a specified number of miles during the course of a pay period, are required not to work further during the course of that period in order to give employment opportunities to other engineers and firemen, who have had less work during that pay period. In lieu of stopping work during the course of a particular period an employee who exceeds the mileage limitations may run fewer miles during the succeeding period. L&N, in the case of favored BLE members, permitted them to exceed the mileage limitation during the course of a period, and did not require them to run fewer miles during the succeeding pay period.

(b) About Fall, 1965, prior to the establishment of the apprentice engineer program on April 28, 1966, L&N appointed a BLE local chairman (chairman of a local lodge) as head of a training program for firemen and engineers.

The apparent purpose of the training program was to provide classroom instruction and additional road experience in the handling of locomotives. Additionally the training program is used as device to demonstrate L&N's favoritism to BLE and enable BLE to recruit members. This goal is accomplished by permitting firemen and engineers to attend the program at times when they would not otherwise be working due to mileage limitations and paying them for such attendance. Firemen and enginemen in some cases are permitted to attend the program more than once and some have attended four and five times. The BLE local chairman is given broad discretion in the selection of students, approval of expense reimbursements for attendance, etc. He favors BLE members and BLFE members who he thinks can be persuaded to shift from BLFE to BLE. The delegation of such authority demonstrates to firemen the favored position of BLE in the eyes of L&N and constitutes L&N assistance to BLE.

(c) Favored members of BLE are permitted by L&N to work on behalf of BLE on L&N time and in some cases are credited for mileage not actually operated by them.

(d) L&N has shown favoritism to "apprentices." On occasions reduction of business had reduced the need for engineers and firemen. The "apprentices" serving as junior firemen in the usual course of business would have been furloughed by L&N. Instead, special positions as firemen have been created by L&N for "apprentices" who have completed their training, in order to give special employment opportunities to them. These positions tend to be attractive jobs and to offer special opportunities for these "apprentices" to be called for work as engineers. Additional employment oppportunities have been opened not only in their own seniority districts but also in other seniority districts.

(e) L&N favors "apprentices" who have completed their training and who are working as firemen by seizing every opportunity and creating opportunities to have these men called as engineers. At the East St. Louis yard a special seniority roster was established on or about November 3, 1967, for "apprentices." This special seniority roster will diminish the employment opportunities for firemen in the East St. Louis yards to work as firemen and will diminish the opportunities for firemen who have been promoted to engineer to work as engineers.

21. L&N not only has given aid and special assistance to BLE as alleged above, but also has failed and refused to negotiate in good faith with BLF&E. As set out above, on April 28, 1966, L&N and BLE entered into the purported apprentice agreement. More than 1 year prior thereto, on March 25, 1965, BLF&E served on L&N a notice pursuant to Sec. 6 of the RLA, requesting L&N to negotiate with it regarding the establishment of a training program for firemen, which were then, and continued to be in short supply on L&N. A copy of said notice is attached hereto as Exhibit G. On November 15, 1965, a substantially similar notice was served on most of the other major railroads in the United States. L&N refused to engage in serious negotiations with BLF&E regarding a training program for firemen. In consequence, BLF&E invoked the services of the National Mediation Board (NMB) for purposes of mediation. Mediation on the BLF&E notice was set for August 4, but that day, BLE, to further hamper and delay BLF&E in negotiation for a firemen's training program, filed an action in the U. S. District Court for the District of Columbia (No. 2060-66) which is pending there. L&N has refused to negotiate with BLF&E regarding its firemen training program proposal, even though L&N is obligated to bargain thereon under Section 6 of the RLA. Such acts of L&N and BLE have further served to undermine

BLF&E's influence with the firemen they represent, and otherwise constitute violations of Sec. 2, Second and Third of RLA.

By the acts herein described and other similar conduct, the individual plaintiffs have and will continue to sustain great and irreparable injury to their right to be represented for collective bargaining purposes by the BLF&E, to their right to effective representation by BLF&E without L&N and BLE interference, influence or coercing, and to their right to work without discrimination in accordance with the collective bargaining agreement between the BLF&E and the L&N. Similarly such conduct has and will continue irreparably to injure in a substantial manner the right and duty of the BLF&E to represent for collective bargaining purposes the firemen employed by the L&N. An injunction should be issued by this Court to restrain and enjoin the L&N and the BLE from further engaging in the conduct described in the complaint. Plaintiffs have no adequate remedy at law.

Wherefore, BLF&E prays that this Court

I. Enter a final decree enjoining L&N individually, and L&N and BLE in concert from influencing, interfering, or coercing employees in the selection of their collective bargaining representative. In particular, plaintiffs pray that the court so enjoin L&N and BLE from

A. Directly or indirectly encouraging or facilitating employees to join BLE or to change membership from BLF&E to BLE.

B. Utilizing any device or artifice (such as, but not limited to contraction or expansion of engineer pools, requesting employees not to work) to create work opportunities for any employees or to give any employee a seniority date as a fireman or engineer.

C. Giving preferred assignments as fireman or engineer to any member of BLE or any person being recruited by BLE.

D. Continuing the purported training program for engineers.

E. Employing as "hired engineers" persons who were not bona fide engineers on carriers other than L&N.

F. In any manner violating Sec. 2, Third and Fourth of the RLA.

G. Grant such other relief as the Court deems just.

II. Pending final decree, grant temporarily the relief requested in the permanent decree.

(Signatures of Counsel.)

(Verification.)

[NMB Letter of June 21, 1966. BLE Appendix in No. 17588, 15c.]

NATIONAL MEDIATION BOARD
Washington, D. C. 20572

June 21, 1966

Mr. J. E. Wolfe, Chairman
National Railway Labor Conference
Room 474, Union Station
517 West Adams Street
Chicago, Illinois 60606

Dear Mr. Wolfe:

On June 7, 1966, you advised that the Carriers' Conference Committees and the National Railway Labor Conference were invoking the mediation services of the Board in regard to Section 6 notices served by the Brotherhood of Locomotive Firemen and Enginemen for a training program.

In your telegram of June 7, 1966, you asserted that this dispute involves a jurisdictional issue between the Brotherhood of Locomotive Firemen and Enginemen and the Brotherhood of Locomotive Engineers. You further stated that there cannot be constructive mediation until the Carriers are legally protected in the matter of which of the two organizations is considered the bargaining agent for Apprentice Enginemen for purposes of the Railway Labor Act.

The specific question in dispute as stated in the application dated June 6, 1966, signed by you and the Chairmen of the various Carriers' Conference Committees, was as follows:

"On or about November 15, 1965, the Brotherhood of Locomotive Firemen and Enginemen served a notice under Section 6 of the Railway Labor Act upon railroads represented b ythe Eastern, Western and Southeastern Carriers' Conference Committees and the National Railway Labor Conference, shown on statements attached hereto and made a part hereof marked Exhibits 3, 4, and 5, seeking an agreement covering a training program for apprentice locomotive engineers (a non-existent class for purposes of the Railway Labor Act) as set forth in Exhibit 2, attached hereto and by such reference made a part hereof. The Brotherhood of Locomotive Engineers, in letter dated November 17, 1965, Exhibit No. 1, alleges that it is the proper bargaining agent for the non-existent class if and when such a class is created and, thus, a jurisdictional issue has arisen as to which, by this invocation, the carriers request mediatory services in order that they may be properly and legally informed as to which of the two disputing organizations may legally bargain for and on behalf of Apprentice Locomotive Engineers."

The parties to the dispute as named in the application were:

"Railroads represented by the Eastern, Western, Southeastern Carriers' Conference Committees, respectively, shown on statements attached hereto and made a part hereof, marked Exhibits 3, 4, and 5, the Brotherhood of Locomotive Firemen and Enginemen, and the statutory representative of the class or craft of Locomotive Engineers."

By letter of June 8, 1966, Mr. Gilbert, President of the BLF&E, was asked to comment on this application. His reply was received by telegram June 14, 1966, and copy forwarded to you by wire the same date.

In reviewing Mr. Gilbert's reply, it is noted that he states:

". . . TRAINING NOTICE PROPOSES A TRAINING PROGRAM FOR LOCOMOTIVE FIREMEN—A PROGRAM FOR IMPROVING

THEIR SKILLS IN PREPARATION FOR CERTAIN EXAMINATIONS TO WHICH THEY ARE TO BE SUBJECTED . . . NO JURISDICTIONAL DISPUTE CAN POSSIBLY BE INVOLVED AND THERE IS NO OCCASION WHATEVER FOR DETERMINATION OF REPRESENTATIVES, SINCE THE FIREMEN'S CRAFT IS THE ONLY CRAFT CONCERNED AND THE BLF&E IS THE UNDISPUTED COLLECTIVE BARGAINING REPRESENTATIVE OF THAT CRAFT."

The Brotherhood of Locomotive Engineers have advised us, through their Grand Chief Engineer and Counsel, of their interest in this application. Copies of letters dated June 9, 1966, received from Messrs. Heath and Ross are attached for your information.

These letters indicate the interest of the BLE as the statutory bargaining representative for the craft or class of Locomotive Engineers in the training of Apprentices in that craft or class to skilled employees thereof.

Exhibit 1 attached to your application, which is a letter from Mr. Heath addressed to various carriers, has been carefully reviewed. In that letter, Mr. Heath clearly indicates that the BLE as the designated bargaining representative for the craft or class of Locomotive Engineers has the right and duty to bargain in regard to Apprentice Locomotive Engineers who are part of that craft or class.

Clearly, the above résumé indicates that neither the Brotherhood of Locomotive Enginers nor the Brotherhood of Locomotive Firemen and Enginemen is seeking to extend its jurisdiction beyond the scope of the craft or class of employees they presently represent. Consideration of the contents of your telegram of June 16 does not alter this conclusion.

Your application states that:

> ". . . the carriers request mediatory services in order that they may be properly and legally informed as to which of the two disputing organizations may legally bargain for and on behalf of Apprentice Locomotive Engineers."

The question as posed involved a question of representation. Such issues are resolved under Section 2, Ninth, of the Railway Labor Act. The application dated June 6, 1966, filed by the National Railway Labor Conference and the several Carriers' Conference Committees for the services of the Board under Section 5, First, of the Railway Labor Act, is therefore dismissed.

A copy of your telegram of June 16, 1966, is being forwarded to Mr. Gilbert.

Copies of the pertinent correspondence are being forwarded to the BLE in order that their files may be complete.

Very truly yours,

/s/ THOMAS A. TRACY,
Executive Secretary.

* * * * *

[NBM Letter, July 22, 1966. BLE Appendix in No. 17,588, 50c.]

NATIONAL MEDIATION BOARD
Washington, D. C. 20572

July 22, 1966

Mr. P. S. Heath, Grand Chief Engineer
Brotherhood of Locomotive Engineers
1118 BLE Building
Cleveland, Ohio 44114

Dear Mr. Heath:

On July 1, 1966, the Brotherhood of Locomotive Engineers addressed a telegram to the Board requesting its services pursuant to Section 2, Ninth, of the Railway Labor Act in a dispute involving representation of Apprentice Locomotive Engineers employed by the Louisville and Nashville Railroad.

In the telegram it was pointed out that the Brotherhood of Locomotive Engineers, as the certified representative of the Locomotive Engineers, had entered into an agreement with the Louisville and Nashville Railroad on April 28, 1966, for Apprentice Locomotive Engineers as a part of the craft or class of Locomotive Engineers. It was further stated that the Brotherhood of Locomotive Firemen and Enginemen had raised the question as to the BLE's right to represent Apprentice Locomotive Engineers employed by the Louisville and Nashville Railroad before the United States District Court for the Western District of Kentucky (Civil Action No. 5402).

This telegram was acknowledged and copies transmitted to the Carrier and the BLF&E for comments. The telegram

was supplemented by a letter from the BLE, dated July 5, 1966, copy of which was also furnished to the Carrier and the BLF&E. Subsequently, comments were received from both the carrier and the BLF&E.

Mr. Scholl, Director of Personnel, Louisville and Nashville Railroad, in a letter dated July 11, 1966, states:

> "In compliance with your request that we furnish you a statement of our position in that matter, we wish to advise that, in our opinion, the Brotherhood of Locomotive Engineers represents apprentice locomotive engineers on this railroad and we have accordingly entered into an agreement with that organization relative to such apprentices."

Mr. Gilbert, President of the Brotherhood of Locomotive Firemen and Enginemen, in his letter of July 13, 1966, states:

> "Accordingly, it is clear that what Mr. Heath is asking the Board to do is to extend a right which it now has to represent on the L&N the craft or class of locomotive engineers to embrace employees performing the functions of firemen in violation of the representation rights of this organization and in violation of the rights of the employees to select their own collective bargaining representative."

In the present situation, it is clear that the Brotherhood of Locomotive Engineers has been certified by the National Mediation Board, Case No. R-3225, Certification issued December 31, 1957, as the representative of the craft or class of Locomotive Engineers, employees of the Louisville and Nashville Railroad Company. Neither the carrier nor the Brotherhood of Locomotive Firemen and Enginemen dispute this fact.

It is also clear that the carrier has recognized the Brotherhood of Locomotive Engineers at the representative of the Apprentice Locomotive Engineers, employees of the

L&N Railroad and have entered into an agreement with that organization relative to such apprentices.

Careful scrutiny of the statements received from the Brotherhood of Locomotive Firemen and Enginemen fails to reveal a position that a representation dispute exists.

Section 2, Ninth, of the Railway Labor Act provides:

> "If any dispute shall arise among a carrier's employees as to who are the representatives of such employees designated and authorized in accordance with the requirements of this Act, it shall be the duty of the Mediation Board, upon request of either party to the dispute, to investigate such dispute and to certify to both parties, in writing, within thirty days after the receipt of the invocation of its services, the name or names of the individuals or organizations that have been designated and authorized to represent the employees involved in the dispute, and certify the same to the carrier."

Section 2, Ninth, of the Act quoted above authorizes this Board to investigate a dispute to determine the representative of the employees, but under this section of the law, the Board has no authority to decide a jurisdictional dispute as such.

Review of the contentions of all concerned indicates that the dispute, if any exists, is not a representation dispute; but may involve an issue as to the right of the employees of one craft or class to do the work that is alleged to be that commonly done by employees of another craft or class. Procedures other than those outlined in Section 2, Ninth, of the Railway Labor Act are available to settle such disputes.

The Board in executive session July 19, 1966, examined the complete file pertaining to the request received from the Brotherhood of Locomotive Engineers to investigate, pursuant to Section 2, Ninth, of the Railway Labor Act,

a representation dispute among Apprentice Locomotive Engineers as part of the craft or class of Locomotive Engineers. After full consideration of the request and the arguments of the parties in support of their contentions, the Board concludes and hereby finds that no dispute within the meaning of Section 2, Ninth, of the Act exists and that the application of the Brotherhood of Locomotive Engineers should be and is hereby dismissed.

By direction of the National Mediation Board.

THOMAS A. TRACY,
Executive Secretary.

cc: Mr. W. S. Scholl, Director of Personnel
The Louisville and Nashville Railroad Company
908 West Broadway, P. O. Box 1198
Louisville, Kentucky
Mr. H. E. Gilbert, President
Brotherhood of Locomotive Firemen and Enginemen
15401 Detroit Avenue
Cleveland, Ohio 44107

[District Court's Decision in No. 18,479.]

(L&N Appendix 49b-50b.)

By the Court: Gentlemen, the Court is of the opinion that this is not a justiciable controversy for the Court and that action 5134 and 5402 were dispositive of it insofar as this Court's action is concerned.

It would appear to me that to make a determination as to the proselyting of these Union men would require a determination by the Court as to the proper employee representation in these crafts under the agreements which clearly is not a matter for the Court.

He is not familiar with the practice of railroads. He has no expertise in this regard. I feel that no status-quo relief is entitled for the reason that the granting of even status-quo relief without some administrative order upon which to base it—of course, the Court has equitable power to force the L&N to bargain with anybody once there is a determination by somebody qualified as to who they ought to bargain with, and the Court wouldn't hesitate to use its equitability [equitable] power in that regard, but in this instance, there has been no such determination.

Now, the Defendants' motion—each Defendant's motion, is sustained and you will prepare findings of fact and conclusions with copies to Mr. Hogan.

Railway Labor Act, Sec. 2,

"First. It shall be the duty of all carriers, their officers, agents, and employees to exert every reasonable effort to make and maintain agreements concerning rates of pay, rules, and working conditions, and to settle all disputes, whether arising out of the application of such agreements or otherwise, in order to avoid any interruption to commerce or to the operation of any carrier growing out of any dispute between the carrier and the employees thereof.

"Second. All disputes between a carrier or carriers and its or their employees shall be considered, and, if possible, decided, with all expedition, in conference between representatives designated and authorized so to confer, respectively, by the carrier or carriers and by the employees thereof interested in the dispute.

"Third. Representatives, for the purposes of this Act, shall be designated by the respective parties without interference, influence, or coercion by either party over the designation of representatives by the other; and neither party shall in any way interfere with, influence, or coerce the other in its choice of representatives. . . .

"Fourth. Employees shall have the right to organize and bargain collectively through representatives of their own choosing. The majority of any craft or class of employees shall have the right to determine who shall be the representative of the craft or class for the purposes of this Act. No carrier, its officers or agents, shall deny or in any way question the right of its employees to join, organize, or assist in organizing the labor organization of their choice, and it shall be unlawful for any carrier to interfere in any way with the organization of its employees, or to use the funds of the carrier in maintaining or assisting or contributing to any labor organization, labor representative, or other agency of collective bargaining, or in performing any work therefor, or to influence or coerce employees in an effort to induce them to join or remain or not to join or remain members of any labor organization or to deduct from the wages of employees any dues, fees,

assessments, or other contributions payable to labor organizations, or to collect or to assist in the collection of any such dues, fees, assessments, or other contributions: . . .

* * * * *

"Seventh. No carrier, its officers, or agents shall change the rates of pay, rules, or working conditions of its employees, as a class as embodied in agreements except in the manner prescribed in such agreements or in section 6 of the Act.

* * * * *

"Ninth. If any dispute shall arise among a carrier's employees as to who are the representatives of such employees designated and authorized in accordance with the requirements of this Act, it shall be the duty of the Mediation Board, upon request of either party to the dispute, to investigate such dispute and to certify to both parties, in writing, within thirty days after the receipt of the invocation of its services, the name or names of the individuals or organizations that have been designated and authorized to represent the employees involved in the dispute, and certify the same to the carrier. Upon receipt of such certification the carrier shall treat with the representative so certified as the representative of the craft or class for the purposes of this Act. In such an investigation, the Mediation Board shall be authorized to take a secret ballot of the employees involved, or to utilize any other appropriate method of ascertaining the names of their duly designated and authorized representatives in such manner as shall insure the choice of representatives by the employees without interference, influence, or coercion exercised by the carrier. In the conduct of any election for the purposes herein indicated the Board shall designate who may participate in the election and establish the rules to govern the election, or may appoint a committee of three neutral persons who after hearing shall within ten days designate the employees who may participate in the election. The Board shall have access to and have power to make copies of the books and records of the carriers to obtain and

utilize such information as may be deemed necessary by it to carry out the purposes and provisions of this paragraph."

Railway Labor Act, Sections 5 First, and 6, 45 U. S. C. A. §§ 155 First and 156.

SECTION 5. First. The parties, or either party, to a dispute between an employee or group of employees and a carrier may invoke the services of the Mediation Board in any of the following cases:

(a) A dispute concerning changes in rates of pay, rules, or working conditions not adjusted by the parties in conference.

(b) Any other dispute not referable to the National Railroad Adjustment Board and not adjusted in conference between the parties or where conferences are refused.

The Mediation Board may proffer its services in case any labor emergency is found by it to exist at any time.

In either event the said Board shall promptly put itself in communication with the parties to such controversy, and shall use its best efforts, by mediation, to bring them to agreement. If such efforts to bring about an amicable settlement through mediation shall be unsuccessful, the said Board shall at once endeavor as its final required action (except as provided in paragraph third of this section and in Section 10 of this Act) to induce the parties to submit their controversy to arbitration, in accordance with the provisions of this Act.

If arbitration at the request of the Board shall be refused by one or both parties, the Board shall at once notify both parties in writing that its mediatory efforts have failed and for thirty days thereafter, unless in the intervening period the parties agree to arbitration, or an emergency board

shall be created under Section 10 of this Act, no change shall be made in the rates of pay, rules, or working conditions or established practices in effect prior to the time the dispute arose. . . .

SECTION 6. Carriers and representatives of the employees shall give at least thirty days' written notice of an intended change in agreements affecting rates of pay, rules, or working conditions, and the time and place for the beginning of conference between the representatives of the parties interested in such intended changes shall be agreed upon within ten days after the receipt of said notice, and said time shall be within the thirty days provided in the notice. In every case where such notice of intended change has been given, or conferences are being held with reference thereto, or the services of the Mediation Board have been requested by either party, or said Board has proffered its services, rates of pay, rules, or working conditions shall not be altered by the carrier until the controversy has been finally acted upon as required by Section 5 of this Act, by the Mediation Board, unless a period of ten days has elapsed after termination of conferences without request for or proffer of the services of the Mediation Board.